

AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

**SENATE BILL**

**No. 827**

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**Introduced by Committee on Governmental Organization (Senators Wright (Chair), Benoit, Calderon, Denham, Florez, Harman, Negrete McLeod, Oropeza, Padilla, Romero, Wiggins, Wyland, and Yee) Senator Wright**

March 19, 2009

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An act to add Title 16.5 (commencing with Section 98020) to, to repeal Sections 12012.25, 12012.30, 12012.35, 12012.40, 12012.45, 12012.46, 12012.465, 12012.47, 12012.475, 12012.48, 12012.485, 12012.49, 12012.495, 12012.5, 12012.51, 12012.515, 12012.52, 12012.53, 12012.75, 12012.85, and 12012.90 of, to repeal Chapter 7.5 (commencing with Section 12710) of Part 2 of Division 3 of Title 2 of, and to repeal Chapter 3 (commencing with Section 98055) of Title 16.5 of, the Government Code, relating to gaming—*An act to add and repeal Section 40440.13 of the Health and Safety Code, relating to the South Coast Air Quality Management District, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 827, as amended, ~~Committee on Governmental Organization Wright. Tribal gaming—South Coast Air Quality Management District: CEQA: permits.~~

(1) *The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead*

*agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.*

*Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national ambient air quality standard is required to establish by regulation, a system by which all reductions in emissions of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are banked prior to use. The South Coast Air Quality Management District (district) promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No. BS 110792), the superior court found the promulgation of certain of these district rules to be in violation of CEQA.*

*This bill would authorize the district to issue permits under specified circumstances, notwithstanding this court decision. The provisions of the bill would be repealed on May 1, 2012.*

*(2) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.*

*(3) This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing federal law, the Indian Gaming Regulatory Act of 1988, provides for the negotiation and execution of tribal-state gaming compacts for the purpose of authorizing certain types of gaming on Indian lands within a state. The California Constitution authorizes the Governor to negotiate and conclude compacts, subject to ratification by the Legislature.~~

~~Existing law ratifies a number of tribal-state gaming compacts between the State of California and specified Indian tribes. Existing law creates in the State Treasury the Indian Gaming Revenue Sharing Trust Fund and the Indian Gaming Special Distribution Fund for the receipt and deposit of moneys received by the state from Indian tribes pursuant to the terms of gaming compacts entered into with the state, and authorizes moneys in those funds to be used for certain purposes. Existing law establishes the method of calculating the distribution of appropriations~~

from the Indian Gaming Special Distribution Fund for grants to local government agencies impacted by tribal gaming.

~~This bill would reorganize and make technical, nonsubstantive changes to these provisions.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. *The Legislature finds and declares all of the*  
2     *following:*  
3     (a) *As a result of the superior court decision in Natural*  
4     *Resources Defense Council v. South Coast Air Quality*  
5     *Management District (Super. Ct. Los Angeles County, 2007, No.*  
6     *BS 110792) holding that the South Coast Air Quality Management*  
7     *District (district) violated the requirements of the California*  
8     *Environmental Quality Act (CEQA) (Division 13 (commencing*  
9     *with Section 21000) of the Public Resources Code) in the*  
10    *promulgation of certain district rules, the district is unable to issue*  
11    *over a thousand pending permits that rely on the district's internal*  
12    *offset bank to offset emissions.*  
13    (b) *The district may also have to set aside several thousand*  
14    *permits that were previously issued in reliance on the district's*  
15    *internal offset bank.*  
16    (c) *Prompt legislative action is necessary as an interim measure;*  
17    *otherwise projects will be stopped from going forward or frozen*  
18    *in place, representing significant losses to the economy and the*  
19    *loss of numerous well-paying jobs.*  
20    (d) *Nothing in the case described in subdivision (a) requires*  
21    *the setting aside of any permit issued by the South Coast Air*  
22    *Quality Management District to any essential public service, that*  
23    *relied on Rule 1309.1, nor any permit that relied on Rule 1304,*  
24    *between September 8, 2006, and November 3, 2008.*  
25    SEC. 2. *Section 40440.13 is added to the Health and Safety*  
26    *Code, to read:*  
27    40440.13. (a) *Notwithstanding the decision of the court in*  
28    *Natural Resources Defense Council v. South Coast Air Quality*  
29    *Management District (Super. Ct. Los Angeles County, 2007, No.*  
30    *BS 110792), the south coast district may issue permits in reliance*  
31    *on, and in compliance with, south coast district Rule 1304, as*

1 amended on June 14, 1996, except for an electrical generation  
2 facility, and Rule 1309.1, as amended May 3, 2002, for essential  
3 public services, as defined in subdivision (m) of Rule 1302, as  
4 amended December 6, 2002.

5 (b) Nothing in this section affects the decision in the case  
6 described in subdivision (a) concerning the adoption, readoption,  
7 or amendment, or environmental review, of south coast district  
8 Rule 1315.

9 (c) In implementing subdivision (a), the south coast district shall  
10 rely on the emission reduction credit tracking system used prior  
11 to the adoption of Rule 1315, until a new tracking system is  
12 approved by the United States Environmental Protection Agency  
13 and is in effect, at which point that new system shall be used by  
14 the south coast district in implementing subdivision (a). The south  
15 coast district shall make information concerning the credits, and  
16 the tracking of these credits, available to the public.

17 (d) This section shall remain in effect only until May 1, 2012,  
18 and as of that date is repealed, unless a later enacted statute, that  
19 is enacted before May 1, 2012, deletes or extends that date.

20 SEC. 3. The Legislature finds and declares that a special law  
21 is necessary and that a general law cannot be made applicable  
22 within the meaning of Section 16 of Article IV of the California  
23 Constitution because of unique circumstances concerning the South  
24 Coast Air Quality Management District.

25 SEC. 4. This act is an urgency statute necessary for the  
26 immediate preservation of the public peace, health, or safety within  
27 the meaning of Article IV of the Constitution and shall go into  
28 immediate effect. The facts constituting the necessity are:

29 Due to the court decision in *Natural Resources Defense Council*  
30 *v. South Coast Air Quality Management District* (Super. Ct. Los  
31 Angeles County, 2007, No. BS 110792), the South Coast Air Quality  
32 Management District is unable to issue over a thousand pending  
33 permits that are either exempt from offset requirements or qualified  
34 to use offset credits from the district's Priority Reserve and is  
35 required to set aside thousands of permits already issued.  
36 Therefore, in order to allow the district to issue permits in an  
37 expeditious manner as an urgent interim measure, it is necessary  
38 that this act take effect immediately.

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**All matter omitted in this version of the bill  
appears in the bill as introduced in  
Assembly, March 19, 2009 (JR11)**

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